UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Conroe, TX

SOUTHERN MAIL SERVICE, INC.,
BYRD TRUCKING CO., INC., S&B STAGELINES, INC.,
ALAMO MAIL SVC., INC., E&L MAIL, INC.,
and H&L MAIL INC., a Single Employer

Employers

and Case No. 16-RC-10235

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employers are engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.2/
3. The labor organization involved claims to represent certain employees of the Employers.3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.4/

5. The following employees of the Employers constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All permanent full-time and part-time truck drivers employed by Southern Mail Service, Inc., Byrd Trucking Co., Inc., S&B Stagelines, Inc., Alamo Mail Svc., Inc., E&L Mail, Inc., and H&L Mail, Inc., a Single Employer, who are assigned, stationed or dispatched from the Employers' terminals located in Dallas, San Antonio and Houston, Texas.
>
> **Excluded:** All other employees including professionals, technicals, mechanics, dispatchers, clericals, administrative employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION 5/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services

of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by American Postal Workers Union, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Co.,*** 394 U.S. 759 (1969); and ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Regional Office, 819 Taylor Street, Federal Office Building, Room 8A24, Fort Worth, Texas 76102, on or before July 18, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 25, 2000.

DATED July 11, 2000, at Fort Worth, Texas.

/s/ Claude L. Witherspoon
Claude L. Witherspoon,
Acting Regional Director
NLRB Region 16

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1. Briefs have been timely submitted by the parties and they have been duly considered.

2. The parties stipulated that each of the Employers, Southern Mail Service, Inc. (SMS), Byrd Trucking Co., Inc. (Byrd), S&B Stagelines, Inc. (S&B), Alamo Mail Svc., Inc. (AMS), E&L Mail, Inc. (E&L) and H&L Mail, Inc. (H&L) are Texas corporations engaged in the transportation of mail. During the past 12 month period each Employer derived gross revenues in excess of $50,000 for the transportation of mail directly to customer locations outside the State of Texas.

3. The parties stipulated, and I find, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. Each of the six Employers has a contractual relationship with the United States Postal Service (USPS) for the transportation and delivery of mail. Tish Farrell and Wayne Winkler, respectively are president and vice president of each Employer. Farrell is also a partial, beneficial owner of each Employer. Farrell and Winkler office in the administrative offices for all six Employers, which are located in Conroe, Texas.

Tommy Sparks, vice president of SMS, reports directly to Farrell. Sparks is also the general manager of the three truck terminals established by these Employers. These terminals are located in Dallas, San Antonio and Houston, Texas. Each terminal is supervised by a terminal manager. Michael Felton, employed by SMS, is the terminal manager in Dallas; Richard Romero, employed by AMS, is the terminal manager in San Antonio and James McMullen, employed by H&L, is the terminal manager in Houston.

There are about 306 permanent full-time and part-time drivers assigned, stationed or dispatched out of the three terminals. In Dallas, SMS has 89 drivers, Byrd has 48, S&B has 34, AMS has three and E&L has one. The San Antonio terminal has 77 AMS drivers, 10 SMS drivers and E&L has two. In Houston H&L employs 23 drivers, SMS employs eight drivers, E&L employs six drivers and AMS five drivers. The record does not reveal how many drivers are full-time and how many are part-time.

Petitioner seeks to represent all permanent full-time and part-time drivers employed at all three terminals in one bargaining unit, excluding all other employees. The Employers argue there should be three separate bargaining units consisting of the drivers located in each terminal. They also argue the petition should be dismissed due to a conflict of interest based on the fact that if Petitioner is certified as the collective bargaining representative of the Employers, it will represent employees who have interests that compete with other employees the Union already represents. In its brief, Petitioner argues that the six Employers constitute a single employer. Also in dispute is the supervisory status of the general manager and terminal managers and the eligibility of part-time drivers.

General Manager Sparks has oversight responsibility over each terminal. While officed in Dallas, Sparks visits each of the other terminals two or three times a year for general review of operations, to visit with employees and to address any pending problems, e.g., terminations and disciplinary actions. Sparks also visits the administrative offices in Conroe about six times a year to review pending and/or future contracts between all Employers and their sole customer (USPS) and other company-wide problems. Sparks makes all the final decisions regarding the hiring and firing of drivers, but terminal managers are responsible for recommending such actions. Only Sparks and the president (Farrell) have authority to authorize an employee's return to work from family medical leave or to grant exceptions to the Employers' policies regarding leave requests. Additionally, Sparks maintains the bid boards for all three terminals. Based on the evidence of responsibilities of the general manager, I find Sparks to be a supervisor within the meaning of the Act and he will be excluded from the appropriate unit found in this matter.

Each terminal is managed on a daily basis by the terminal manager. Terminal managers make recommendations regarding the hiring and firing of drivers in their respective terminals to the general manager. The record reveals these recommendations are effective, i.e., reporting to the general manager is merely a

procedural step. Terminal managers are responsible for maintaining the tractors and trailers assigned to their terminals, collecting the paperwork turned in by drivers, scheduling and dispatching drivers, investigating accidents and processing leave requests (time off, vacations) of drivers assigned to their terminals. Review of the Employers' employee manual reveals that terminal managers have the responsibility to administer the Employers' policies at the terminal level. Thus, there is ample evidence in the record that the three terminal managers are supervisors within the meaning of the Act. Accordingly, Felton, Romero and McMullen will be excluded from the appropriate unit.

The record reveals there are two classifications of drivers, permanent full-time drivers and permanent part-time drivers. Full-time drivers are eligible to bid on the routes they will run. Bidding occurs about once every two years and is based on seniority. General Manager Sparks oversees the bidding process for all terminals. The terminal manager also participates in the bidding process at his terminal. Drivers may only bid for routes of their Employers. For example, a San Antonio-based SMS driver cannot bid on a San Antonio-based AMS route. However, the same driver may bid on an SMS route based in Dallas. The only two criteria the driver must meet is sufficient seniority to be the successful bidder and a willingness to move to the city where the route originates. Although the record does not reveal the frequency drivers have used this bid process to move from one location to another, the benefit is available to drivers of all Employers.

There are three types of routes run by drivers of all Employers: turnaround routes, slide routes and layover routes. The most common of these routes, the turnaround route, requires a driver to pick up a load of mail at one or more facility, deliver it to one or more facility, and then return to the home terminal within the same work day. Slide routes require a driver from one terminal to pick up a load of mail and deliver it to a "half-way" point where a driver from another terminal picks up the mail and completes the delivery before returning to his home terminal. These slide drivers may exchange trailers or they may exchange tractor and trailer depending on the route. On several slide routes drivers also exchange documents for delivery to their respective home terminals. The record reveals that some of the slide routes are used to deliver driver logs and time-cards from one location to another. However, all original payroll records are maintained in the Conroe administrative offices and all payroll checks are issued from Conroe. Layover routes literally involve routes that require the driver to "layover" or rest before returning to the home terminal. In these situations, the Employers maintain facilities for the drivers to rest. Both the Dallas and San Antonio terminals have bunkhouses, where a layover driver may rest at the terminal. Drivers in Houston rest at an off-site facility.

Neither party disputes the inclusion of part-time drivers in any unit determined appropriate herein. The classification of part-time driver refers to drivers assigned to routes from the Employers' extra board. Each terminal has its own extra board, which is managed by the terminal manager. Extra board routes consist of routes established since the last bidding and/or routes that become available resulting from a

full-time driver's absence due to injury, illness or vacation. An extra board driver may be employed by one Employer, but be assigned to another Employer's route. In this situation, the extra board driver still receives one paycheck from his Employer. For example, an AMS extra board driver stationed in San Antonio who runs several Byrd extra board routes during a pay-period would still receive one paycheck from AMS. The record does not reveal whether part-time drivers average a minimum number of hours of work per week. Other than their ineligibility to bid on routes, the record is void of any evidence that the wages or other terms and conditions of employment of part-time drivers are different than those of full-time drivers. Thus, their community of interest with permanent full-time drivers is established by the record. However, the Board inquires into a part-time employee's regularity of employment before determining their eligibility to vote in a representation election. A common test used by the Board is whether the part-time employee has regularly averaged four or more hours per week for the last quarter prior to the eligibility date. ***Davison–Paxon Company***, 186 NLRB 21 (1970). If the employee meets or surpasses the four hour minimum, said part-time employee will be eligible to vote. Accordingly, any part-time driver who has averaged four or more hours per week for the quarter immediately prior to the issuance of this decision shall be eligible to vote in this matter.

Each Employer provides an employee manual to its employees. Review of two of the manuals entitled "Employee Information and Reference Guide" reveal that other than containing different Employer names, the manuals are identical. In addition to setting forth terms and conditions of employment, each manual notes that an employee's return to work from family medical leave must be cleared with the general manager. Employees are referred to the same P.O. box address when seeking use of the Employers' alternative dispute resolution procedures. All six Employers provide the same 401(k) plan for their employees. Driver wages are determined by the wage determinations contained in each contract (between the Employer and USPS) and the applicable wage determination establishing the driver wage rate is based on the place of origin of the route. For example, all drivers whose routes originate from Houston receive the wages determined by the Houston area wage determination. However, a driver stationed in San Antonio whose route originates in Dallas receives Dallas' wages determined by the Dallas area wage determination. The record does not reveal the difference in wage rates from one location (terminal) to another. All drivers at the three terminals have the same vacation and holiday policies, although these policies are applied within each terminal. In the case of accidents, one common form is used by all Employers. Administrative records and payroll documents for all six Employers are maintained in the Conroe administrative offices. Payroll checks for each Employer's employees are issued from Conroe.

Single Employer

In its post-hearing brief, Petitioner argues that these six Employers are, in fact, a single employer. Single employer status may be found where separate entities operate as an integrated enterprise in such a manner that, "for all purposes, there is in

fact only a single employer." ***NLRB v. Browning-Ferris Industries***, 691 F.2d 1117, 1122 (3d Cir. 1982). The factors used by the Board to determine whether integration is sufficient for single employer status are: common ownership or financial control, common management, centralized control of labor relations and interrelation of operations. See, ***Radio Union v. Broadcast Service of Mobile***, 380 U.S. 255 (1965); ***South Prairie Construction Co. v. Operating Engineers Local 627***, 425 U.S. 800, 802 (1976), ***Hydrolines, Inc.,*** 305 NLRB 416 (1991). Not all of these criteria need to be present to establish single employer status. ***Centurion Auto Transport, Inc.***, 329 NLRB No. 42 (1999). The record evidence establishes that the six Employers in the instant case constitute a single employer.

Common ownership is established by Tish Farrell's ownership interest in all six Employers. Common management is established by the hierarchical management structure of the Employers. Farrell and Winkler are the top two officials for all Employers. Sparks, a vice president of SMS, is the general manager of the three terminals with oversight responsibilities over each terminal manager and terminal operations which includes oversight supervision of employees employed by all six Employers. Dallas Terminal Manager Felton is employed by SMS. San Antonio Terminal Manager Romero is employed by AMS and H&L employee McMullen is the terminal manager in Houston. Despite being employed by different Employers, both Romero and McMullen (as well as Felton) report to and are supervised by Sparks. Sparks and the terminal managers jointly perform the hiring and firing of all employees in the terminals regardless by which of the six Employers the employees may be employed. For example, a newly-hired AMS driver in Houston is supervised by H&L's McMullen, who reports to Sparks, vice president of SMS. Finally, a driver assigned, stationed or dispatched from a terminal, regardless by which of the six Employers he/she may be employed, is supervised on a daily basis by the terminal manager who is likely to be employed by one of the other Employers.

With regard to centralized control over labor relations, the record reflects all drivers work under the same terms and conditions of employment as described in the Employee Information and Reference Guide. Thus, all of the Employers' drivers are subject to the same equal employment opportunity policy, sexual harassment policy, time card policy, probationary policy, smoking and drug and alcohol abuse policies, and the same administrative policies regarding outside employment, holidays, vacations, open door policies, work week, and medical and disability leave policies. Any issue raised by a driver regarding interpretation of a provision of the manual is referred to the terminal manager or general manager. Allegations of sexual harassment may be reported to the terminal manager, general manager or "president of the Company". If a driver requests review of the drug and alcohol testing procedure, he/she is required to contact the general manager. Vacation requests may be submitted directly to the general manager. The open door policy permits a driver to deal directly with the general manager or president. Issues regarding paychecks are to be reported to the immediate supervisor and the general manager. Driver requests for extensions of medical leave must be submitted and approved by the general manager or president, and return to work from said leave must also be

approved by either of these officers. All exceptions to leave of absence policies must by approved by the general manager or the president. Thus, other than wages, which are dictated by each Employer's contract with the USPS, all hours, and other terms and conditions of employment of every driver employed by any of the six Employers are centrally determined by the same management.

With respect to interrelation of operations, the record reveals that within a terminal, drivers employed by one Employer may run routes of another Employer simply on the instruction of the terminal manager. In such a situation, the driver receives one paycheck issued by his Employer. All paperwork regarding drivers' logs and time cards is managed at the Employers' administrative offices in Conroe. This is the case regardless of whether the driver is stationed, assigned or dispatched from the Dallas, San Antonio or Houston terminals. Outside the terminal, drivers from the originating terminal operating on layover routes interact with other layover drivers at the destination terminal where layover drivers rest (although not necessarily at the terminal as is the case with Houston, which has an off-site resting location). Slide drivers from the originating terminal interact on a daily basis with slide drivers from the destination terminal. While there are a total of eight layover drivers (two in Dallas, four in San Antonio and two in Houston) and a total of 34 slide drivers (14 in Dallas, eight in San Antonio and 12 in Houston), these numbers do not factor in the number of other drivers substituted to perform the route as a result of a scheduled driver's accidents, injuries, absences and vacations.

The record also reveals that all three terminal facilities have universal locks on their gates and gas pumps and all drivers possess a universal key to access and utilize the facilities of a visited terminal, a situation that occurs in the case of layovers and emergencies. Further, all full-time drivers may bid from one terminal to another, albeit only for the same Employer and so long as the driver is willing to relocate to the new terminal. In the one example provided by the record, general manager Sparks was directly involved in the transfer. Sparks was also directly involved in the disciplining of an AMS driver stationed in San Antonio. Either through bidding or direct assignment by the terminal manager, a driver may perform a layover route for one Employer then perform a slide route for another Employer. In the case of an emergency, a Dallas-based SMS driver who broke down in Houston was provided a Byrd tractor from the Houston terminal to complete his route. Record evidence also reflects that drivers, when in transit, may attend safety meetings held at other than their assigned terminal. Thus, the record provides substantial evidence that these six Employers have common ownership and management, that their labor relations are centralized and that their operations are interrelated. Accordingly, I find these six Employers to constitute a single employer.

Appropriate Unit

An appropriate unit determination does not require the petitioned-for unit to be the only appropriate unit or the most appropriate unit; all that is required is that the unit be appropriate to ensure to employees in each case full freedom to exercise the rights

guaranteed by the Act. ***Overnite Transportation Co.,*** 322 NLRB 723 (1996). A relevant, but not dispositive, consideration is the petitioner's desire as to the appropriate unit. ***Marks Oxygen Co.,*** 147 NLRB 228, 230 (1964). As a general rule, single facility units are presumptively appropriate. The Employers argue that the presumption supporting separate units of employees located in terminals that are geographically remote should be applied in this matter. In support of this position, the Employer relies on ***Centurion Auto Transport, Inc.***, 329 NLRB No. 42 (1999). The Employer's reliance on ***Centurion*** is misplaced. In ***Centurion***, the petitioner sought a single facility unit of drivers at the employer's Jacksonville, Florida operations. The employer urged that any appropriate unit must also include drivers at a remote facility in Commerce, Georgia, some 300 miles from Jacksonville. The facts in Centurion are clearly distinguishable from those in the instant case. Initially, in ***Centurion*** there was virtually no evidence of employee contact or interchange. In particular, there was no evidence in ***Centurion*** of the integrated, cross-facility bidding process present in the instant case. Additionally, in the instant case there are multiple examples of drivers from one facility making runs from another facility, exchanging equiptment with drivers from other facilities and even sharing sleeping quarters with drivers from other facilities. Moreover, the single facility presumption is inapplicable when a union petitions for a multi-facility unit. See, ***Carson Cable TV***, 275 NLRB No. 201 enf'd ***NLRB v. Carson Cable TV***, 795 F.2d 879, 123 LRRM 2225 (9th Cir. 1986). In light of the single employer finding, I view this petition as one seeking a multi-facility unit.

When considering the scope of an appropriate unit, central control of labor relations, interchange of employees, similarity of skills, conditions of employment, supervision, bargaining history, the extent of union organization and geographic proximity are factors to consider. ***Kalamazoo Paper Box, Corp.***, 136 NLRB 134, 137 (1962); ***International Paper Co.***, 96 NLRB 295, 298, fn. 7 (1951). None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit. Regarding central control of labor relations, the discussion above concerning single employer is applicable. General Manager Sparks, and above him, President Farrell, have supervisory oversight over all three terminals. Other than wages, all hours, terms and conditions of employment of the petitioned-for drivers are established in the Employee Information and Reference Guide, an employee manual prepared by central management and implemented by each terminal manager under the supervision of Sparks. Although drivers' wages are dictated by area wage determinations in the respective areas where the terminals are located, the record does not reveal differences in drivers' wages from one location to another. All payroll and other administrative records are issued from the Employers' administrative offices. All drivers' paychecks are issued from there as well.

While the extent of interchange among drivers is limited, it is not insignificant. Specifically, drivers from each terminal interact when operating layover and slide routes. While the record identifies only eight layover drivers and 34 slide drivers, these small numbers do not reflect the extent of interchange that otherwise exists.

The record clearly established that drivers operating routes on the extra board may be assigned layover and slide routes. Absences of assigned drivers due to accident, injuries, illnesses and vacations clearly increase the number of drivers that interact with other drivers not assigned to their terminal.

There is no dispute in the record that all drivers, regardless of where they work or for whom they may be employed, have the same skills. Also undisputed is the fact that all drivers have the same terms and conditions of employment, except for wages, which are determined in the same manner for all drivers, but may vary depending on differences in the area wage determination. Although each terminal is separately supervised by the terminal manager, all drivers come under the general supervision of Sparks, and deal directly with Sparks on leave and other matters identified in the employee manual.

In sum, given the drivers' similar skills, benefits, common supervision and evidence of centralized control of labor relations and functional integration of the Employers' operations, I find that the record as a whole supports the conclusion that an employer-wide bargaining unit consisting of the three terminals is an appropriate unit for the purpose of collective bargaining. Accordingly, I find the petitioned-for unit to be appropriate. ***Phoenician,*** 308 NLRB 826 (1962); ***Transerv Systems, Inc.,*** 311 NLRB 766(1993).

Conflict of Interest

The Employers argue the petition should be dismissed because Petitioner should be disqualified from representing its employees as the represents USPS employees and has a policy opposed to subcontracting by the USPS. As the Employers' business is entirely based on service contracts with the USPS, Petitioner's policy and goal to reduce, if not eliminate the contracting out of work, is diametrically opposed to the interests of its drivers. However, no evidence was presented establishing that Petitioner represents any employees who performs the same functions as the petitioned-for drivers in this case. Thus, there exists no record evidence of a direct conflict between the interests of currently represented employees and the drivers Petitioner seeks to represent here.

With regard to the question of conflict of interest, it is well established that a union may not represent the employees of an employer if there exists a conflict of interest on the part of the union that would jeopardize a good-faith collective bargaining relationship between the parties. The Board's standard for finding that a union has a disqualifying conflict of interest is the showing of a "clear and present danger" of interference with the collective bargaining process. ***Alanis Airport Services, Inc.***, 316 NLRB 1233 (1995), citing ***Bausch & Lomb Optical Company (Bausch & Lomb)***, 108 NLRB 1555 (1954). The burden of proof for establishing a disqualification falls on the Employers and "strong public policy favoring free choice of a bargaining agent by employees" is not to be "lightly frustrated." ***Quality Inn Waikiki***, 272 NLRB 1, 6 (1984), enfd., 783 F2d 1444 (9th Cir. 1986), citing ***Sierra***

Vista Hospital, Inc., 241 NLRB 631, 633 (1979). In ***Bausch & Lomb***, the Board found the existence of a conflict of interest where the union seeking to represent an employer's employees had a business in direct competition with the employer. This record is void of any evidence that Petitioner has a competing business enterprise. Accordingly, I find ***Bausch & Lomb*** distinguishable from this case.

The Employers argue that Petitioner has an innate conflict of interest because of its desire that USPS retain all of its mail delivery by truck in-house. Employers rely on ***Catalytic Industrial Maintenance Co. (Catalytic)***, 209 NLRB 641 (1974) in support of their contention that Petitioner should be disqualified from representing its drivers. In ***Catalytic***, a post-certification proceeding, the Board affirmed the administrative law judge (ALJ) who found the union's certification should be revoked because of an "overt act" committed by the union that created a conflict of interest in the union's representation of the contracting employer (Oxochem) and subcontracting employer's (Catalytic) employees. The ALJ found the union had demanded the subcontracting employees be brought "in-house" to the contracting employer and that this demand, in fact, impacted the negotiation of a new collective-bargaining agreement between the union and Oxochem. The Judge noted that by seeking to force Oxochem to retain its employees' work which it had contracted to Catalytic, the union was acting in substantial conflict of interest with regard to its obligations to the employees of Catalytic and such conflict was inherently inimical to the bargaining relationship between the union and Catalytic.

The facts in the instant case are clearly distinguishable from those in ***Catalytic***. First, this case is not a post-certification proceeding. Second, there is no record evidence that Petitioner represents employees performing the same work as that performed by employees in the petitioned-for unit. Further, there is no record evidence of any "overt act" performed by Petitioner tending to show that it would or could act in an inconsistent manner with its future representational obligations regarding the petitioned-for drivers.

The Employers argue that Petitioner has taken a consistent position against the privatization of USPS jobs and has uniformly opposed the contracting and/or subcontracting of any jobs covered by its agreement with USPS. In support of its position that the Petitioner has a disqualifying conflict of interest, the Employers also argue Petitioner has negotiated a provision in its national agreement with the USPS restricting the USPS's right to contract work out. Article 32 requires the USPS to provide APWU certain information regarding the awarding of new contracts or the renewal of new contracts to truck carriers for the transportation of mail. They also argue that direct competition is not a necessary finding to conclude a conflict of interest exists. Enough evidence exists if…"the proximate danger of infection of the bargaining process" exists. ***NLRB v. David Buttrick Company (Buttrick)***, 399 F 2d 505, 507 (1st Cir. 1968). Employers speculate that if Petitioner is certified to bargain on behalf of the drivers, Petitioner will be in a position to make intemperate demands upon them with respect to wages, hours, and working conditions because the Employers will have to concede and thereby price themselves out of competition with

USPS workers. The court in ***Buttrick*** remanded the case to the Board to determine whether the potential for conflict of interest would have an adverse affect on the bargaining relationship. In affirming its earlier decision, the Board stated that evidence of a potential conflict of interest was remote. ***David Buttrick Company***, 167 NLRB 438 (1967). Upon review, the court reconsidered its earlier decision and affirmed the Board, stating there was a considerable burden on an employer to demonstrate that a danger of a conflict of interest interfering with the collective bargaining process was clear and present. ***NLRB v. Buttrick Company***, 399 F 2d 505, 507 (1st Cir. 1968). Here, that burden has not been met and the record contains no evidence to support the Employers' speculation.

The record is void of any evidence establishing the types of conflicts envisioned by the Board in its decisions, and the Employers have cited no cases that would compel a finding disqualifying the Petitioner here. For the reasons stated above, and the record as a whole, I find Petitioner's representation of the Employers' drivers does not constitute a "clear and present danger" to the collective bargaining process and I will not disqualify the Petitioner from representing the drivers in the petitioned-for unit.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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